Memorandum

From: Paul Smith
Date: January 17, 2014

Re: Monrovia Town Center PUD Zoning Change Case

On January 16, 2014, the BOCC voted 4-0-1 to approve, with substantial modifications, Rezoning Case #R-12-02 – Monrovia Town Center Planned Unit Development (PUD). After months of study and analysis, and after months of citizens' comments, and after dozens of hours of hearings and citizens' comments before the Planning Commission and before the Board of County Commissioners—the BOCC approved a zoning change on 398.51 acres of land, changing it from Agriculture to Planned Unit Development, with the following modifications of the MTC proposal:

- 1. Only 398.51 acres will be re-zoned (rather than the requested 457.3). (The 59 acres east of the high power lines will be donated by the applicant for a high school and parkland, but this land will not be re-zoned.)
- 2. Maximum number of dwelling units to be constructed was reduced from 1,510 to 1.250.
- 3. The percentage of dwelling types shall be 70% single family detached and 30% townhouses.
- 4. Multi-family, two-over-two dwelling types are eliminated and not permitted.
- 5. One-half of the permitted dwelling units (625) shall be age-restricted (55+).
- 6. There will be no access from the PUD to Weller Road.

I have reviewed over a thousand pages of material (including applications, petitions, emails, letters, comments and analysis) submitted for our review on the MTC application. This review process has gone on for over a year. In addition, there have been more than a dozen hours of testimony presented to the Board, presenting dozens of issues and factors that I have weighed, evaluated and considered. I will not attempt to address every one of these in this memorandum, but I will address some of the major concerns and reasons why I voted for the modified MTC project.

HISTORY. Initially, it is important to understand some of the history of the Monrovia Town Center development project. The proposed MTC project is located on approximately 457 acres at or near the intersections of Md. Route 75 and Md. Route 80; the concerned area is adjacent to and north of Route 80. With only a minor, recent exception, this area has been continuously planned for residential development since 1972 (as reflected on the County Comprehensive Plans for 1972, 1978, 1984, 1993, 1998, 2004 and 2012). The only exception was for approximately two years (from 2010-2012), when the previous BOCC down-zoned this, and approximately 200 other properties throughout the county, in a controversial decision that

reversed decades of planning by ten prior County Boards. The prior BOCC also cut back the municipal growth boundaries of almost every city in the county, and that Board also passed an APFO which sought to invalidate the APFO of every city in the county that was less stringent than the County's APFO. This led the most populous cities in the County to sue the County to declare the County's new APFO term to be invalid. In 2010 the citizens elected a new BOCC, which promptly acted to reverse the actions of the prior Board, and restored most of the downzoned lands to their previous land use designations. Hundreds of citizens in this County were aggrieved by the draconian actions of the prior Board, which, by the stroke of the pen, eliminated valuable property rights that they had worked hard to acquire. It is important for the County to be consistent and reliable and to be as predictable as possible in the plans and policies it passes for the protection and well-being of us all. It is an important principle of proper government, that long-standing land-use plans should not be eliminated, except for compelling reasons. This principle was ignored and disregarded in the wholesale down-zonings of the prior Board. The prior Board held many meetings before it took its drastic action, but that action evoked widespread opposition to it, and correcting it became one of the main campaign issues in the 2010 election. It was certainly one of my principle pledges—to correct the down-zonings in that Comp Plan, and to restore property rights that were (in my opinion) wrongfully taken.

The majority of this Board was elected, in part, to restore those property rights, including the property rights of Mr. Stanley and Mr. Payne (the two principals/owners of the MTC project). The election of the majority of this Board was clearly a mandate to restore those rights. For a year-and-a-half this Board underwent a thorough Comprehensive Plan review, which resulted in a restoration of most of those properties to their previous status. This Board eliminated the term in the County APFO that was offensive to the municipalities, ending that litigation. During the Comprehensive Plan review, which was completed in the fall of 2012, there was virtually no objection from residents in Monrovia to restoring the land use plans for the Monrovia Town Center. It was not until after that lengthy and thorough review was completed that Monrovia residents began to complain about development of the land where MTC is proposed.

One of the roles of the BOCC is to plan for future land use in the county, and to do so from a county perspective—meaning that the location of future roads, residences, jobs, parks, schools, etc. should be selected from a point of view of what would be best for the entire county, including regional considerations. It was from this perspective that many prior Boards consistently designated the Monrovia area for residential growth beginning in 1972. Homes in this area are accessible to employment in the Baltimore, D.C. and Frederick regions—making this an ideal location for residential growth. This area is much more desirable for residential growth than areas north, west and southwest of the bottleneck of roads in Frederick City. The intersection of routes 75 and 80 also provides important transportation routes such that this is an area with the potential for improved infrastructure to support residential development. These are some of the reasons why this area has been properly planned for residential development for over 40 years.

No area for residential development is without problems and obstacles; and they certainly are present in Monrovia. Any development must be planned to solve those problems as *concurrently* as possible. It has never been a general practice to require that all infrastructure improvements to be in place before an approved development can begin. Rather **reasonable concurrence** of improvements is required. This type of planning is being proposed for the MTC.

There will also be a Developer Rights and Responsibilities Agreement (DRRA) in connection with the MTC. This will benefit both the developer and the County. The developer will have the assurance that the County will not pull the plug on their project after they invest millions of dollars into infrastructure improvements. The County will secure additional improvements and payments for some of the impact of the growth. Prior to the current BOCC, the County had never before used DRRAs. But this Board has. DRRAs bring in more money and move valuable improvements for the County than have ever before been obtained. Developers have agreed to this because it gives them predictability and security, knowing that the County will not subsequently pull the rug out from under them after they have begun to sink millions of dollars into infrastructure improvements. And in case you are not aware that prior Boards have actually done this, I will take this opportunity to remind you. A prior Board abruptly stopped development at Lake Linganore, causing that developer to go bankrupt. And in 2010, the prior Board abruptly stopped the previous development of MTC that the County has approved in 2006, and in which that land owner had made considerable expenditures, as they were relying on the County to keep its word in allowing them to build what the County had already approved.

Some have made the point in testifying in these proceedings that there is a difference between what is legal and what is ethical. However, none of those making this point acknowledged that this applied to Mr. Stanley and Mr. Payne, too. The County previously took the position that it could "legally" terminate their planned development, which the County had approved. There is a pending court case to resolve this—which is currently stayed, while the current MTC application is under consideration. But even if it might have been "legal" for the County to pull the rug out from under that project—even if the County could get away with causing that developer to waste millions of dollars on a project—only for the County to later change its mind and say "No, you can't build it"—but it certainly is not fair and not ethical. It is important that the County be reliable, consistent and fair in its dealings with people—and this requires that the County be consistent with and supportive of its own plans—and not change long-standing plans except for compelling reasons. The prior Board violated this policy to the detriment of hundreds of property owners around the county, and to the detriment of the economic strength of this county. Demands of fairness and ethics require that the County recommit to an appropriate development at the MTC.

THE PROCESS. Community Growth Areas are set by the County's Comprehensive Plan. The 2012 Comp Plan restored the residential growth area to the land in the MTC application. The next steps for MTC was to request a zoning change (from Agriculture to

Planned Unit Development) and to propose a DRRA. For all practical purposes, the two steps are pursued simultaneously, but the zoning change is considered and decided before considering and approving the DRRA to accompany the project. That is what is happening with the MTC project. The zoning change was approved on January 16th; the hearing on the specific DRRA takes place afterwards.

The zoning application can be approved if the proposal meets the county's requirements for certain infrastructure improvements (set forth in the County Zoning Ordinance 1-19-3.110.4 and 1-19-10.500.3). The County staff, led by Jim Gugel, Ron Burns and Denis Superczinski (having decades of experience in county rules and procedures), determined that the proposed MTC request for 1510 homes, without any age-restricted requirement, satisfied all the County requirements.

At the three days of hearings on this project before the BOCC, many citizens raised multiple objections to various aspects of the project, including concerns about inadequacy of Route 75 and excessive impact on other roads and schools. The majority of citizens expressed the view that a reduction of the density and adding an age-restricted limitation would eliminate some of the adverse impacts. The BOCC heard and understands those concerns, and the modifications imposed by the BOCC are a substantial response to those concerns. Although the proposed MTC project was technically in compliance with the County requirements, the BOCC added substantial modifications that will make this project better, and which will better serve all the citizens of the County.

Not all objections raised at the hearing were addressed in the modifications proposed and passed by the BOCC. A number of citizens complained that there was insufficient specificity offered as to when and how Route 75 would be improved and when and how new schools will be built. But at this stage of development, it is both premature and impossible to present all the detailed specifications and projected completion dates for a project the scope of which had yet to even be approved. Many of the objections raised at this hearing about "undetermined" aspects of the project are not valid objections; they do not indicate an understanding of the development process. Similarly, some of the criticisms voiced against County staff was unwarranted and wrong. Insults leveled at some of the County staff was rude and inappropriate. The County Planning and Development Staff has done excellent work. Specifically, Jim Gugel and Denis Superczynski did excellent work, and did an excellent job in handling cross-examination, much of which was argumentative and insulting, and which never would have been permitted in a court of law. The insults that were made of them were wrong and were out-of-line. Perhaps the County Commissioners signed up for insults—but the staff did not.

CITIZEN INPUT. The zoning change process requires a community meeting, but there are no specific requirements of notice, attendance or location. Perhaps we can add some specificity to this in the future. However, one thing is quite obvious in this case—the community has been well aware of the MTC proposal, and many of them have let their opinions and comments be known in great depth, creating hundreds of pages of letters and documents. It cannot be said that the community did not have significant input in this planning process.

There have been hundreds of pages of input from citizens on the MTC proposal, including petitions, emails, letters and expert reports. I have reviewed these submittals, and analyzed and considered them. It is because of this input that I believe that substantial modifications had to be made in the MTC proposal in order to obtain my approval. While I believe that a residential development is appropriate and warranted, it is my opinion that the number of units should be reduced, that the elimination of 2-by-2s should be made, and that making approximately half of the remaining development age-restricted would be appropriate. Of course, this will result in a reduction in some of the payments and improvements that the developer would be required to make, but I believe the end product will be better.

PRIORITY FUNDING AREAS. It is very important that major developments be planned so that they can qualify to be priority funding areas (PFAs). This will qualify the County to obtain State funding for infrastructure (including water, sewer, roads and schools). To do this, State requirements are that net residential areas be zoned with a density of at least 3.5 dwelling units per acre. For this reason, it is critical that this standard be met with the MTC proposal. To meet this requirement, the MTC had to include approximately 1200 dwelling units. The 1250 units approved would yield 3.7 dwelling units per acre, which satisfies the density requirement to become a PFA.

I, like most people in Monrovia, prefer neighborhoods with houses on 1-5 acre lots. Maryland law does not forbid them. But in order to get State assistance with water, sewer, roads and schools, developments must qualify to be in Priority Funding Areas. We have every reason to expect that the MTC development will be designated a priority funding area.

FUNDING FOR ROADS. While the developer will be making some valuable and necessary road improvements, the developer will not be providing all the funding needed to improve the roads that will be impacted by MTC. But these improvements will help improve roads that are in great need of improvement. But these improvements are not all that will be needed. The County recognizes this, and in our transportation funding request to the State in 2013 the County made project planning for improvement of Route 75 our top funding priority for secondary roads. The County intends to continue to work for financial help from the State, and we fully expect to get it.

In the last five years the State has spent \$200 million in adding the East Street Interchange on I-70 and in improving the South Street interchange on I-70. The State is also paying for a new bridge at the Motter Avenue interchange with Route 14 at a cost of over \$14 million. Within the last year the State committed \$80 million to build the Monocacy Boulevard Interchange on Highway 15. We fully expect the State to contribute funding in the future to improvements on Route 75.